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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/712,978 | 11/12/2003 | Richard Baron | AVERP3423USB | 7346 |

7590 08/24/2005

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EXAMINER

TARAZANO, DONALD LAWRENCE

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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1773

DATE MAILED: 08/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/712,978

Applicant(s)

BARON ET AL.

Examiner

D. Lawrence Tarazano

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 6/9/05.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3, 4, 18-32, and 34-47 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 40-47 is/are allowed.
- 6) ☒ Claim(s) 3, 4, 18-24, 26-32 and 34-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

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DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 3, 4, 18-24, 26-32, and 34-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Derwent Document number 1983-848572 (RD-23619A).

3. The adhesion between co-extruded polyester films and ethylene-vinyl alcohol copolymer films is improved with an intermediate bonding layer comprising a blend of ethylene vinyl acetate copolymer (EVA) and ethylene-vinyl alcohol copolymer, or a partially hydrolyzed terpolymer of ethylene, (meth)acrylic acid and vinyl acetate. Pref. in the blend the EVA copolymer is acid-modified and approximately equal proportions of EVA and EVOH polymers are used.

4. The applicants have amended the base claims to recite specific polymers including PVOH. The prior art teaches EVOH, the essential difference between these resins is the ethylene content. It would have been obvious to one having ordinary skill in the art to have used PVOH in place of EVOH in the structures taught since PVOH is a good barrier material and the two resins provide the same function.

5. The adhesive compositions are useful as tie layers in coextruded films and of polyesters such as PET and high barrier EVOH to increase the bond strength between the layers. The products may be in the form of flat film for packaging or e.g. as pipe for the production of

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parisons for blow molding into bottles having good gas barrier properties e.g. for bottling beer.

The adhesive layer does not reduce the mechanical properties of the combined films.

6. Regarding claim 36, the breadth of the ratio of the claimed materials is so large that the mere recitation of the material would be sufficient to envisage the materials within the claimed range.

7. Regarding claims 34+, a bottle or a pipe as taught is an article for fluid transport.

8. Regarding claims 4, 21 and 22, it would have been obvious to one having ordinary skill in the art to have varied the thickness of the films depending on the end use and to biaxially orient / heat stabilize them since this is conventionally done to make strong PET packaging films.

9. Regarding claim 30, it would have been obvious to one having ordinary skill in the art to have varied the thickness of the adhesive layer depending on the amount of adhesive needed to keep the layers together.

10. Regarding claim 25, the prior art teaches ethylene vinyl alcohol copolymer and the applicants claim polyvinyl alcohol. It is the examiners position that one could be used for the other as being functionally equivalent materials, especially when the resin had low ethylene content.

11. Regarding claims 26-29, 37-39, surfactants are used in the polymerization of EVA materials (as stated previously in the last office action), since the polymer is typically polymerized in aqueous media, it would have been obvious to one having ordinary skill in the art to have added surfactants for this purpose. One working in the art would be able to choose

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appropriate surfactants. The examiner takes the position that surfactants would remain after the polymer was collected. The same is true for defoamers.

Response to Arguments

12. Applicant's arguments filed 6/9/05 have been fully considered but they are not persuasive. While the prior art teaches EVOH and the applicants now specifically claim PVOH, these polymers are structurally related. It would have been obvious to one having ordinary skill in the art to have substituted PVOH for EVOH in the structures taught since they are homologous.

Conclusion

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. Lawrence Tarazano whose telephone number is (571)-272-1515. The examiner can normally be reached on 8:30 to 6:00 (off every other Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carol Chaney can be reached on (571)-272-1284. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

D. Lawrence Tarazano
Primary Examiner
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A handwritten signature in black ink, appearing to be 'D/T' or similar, enclosed within a curved line.